

# UTAH FIRE PREVENTION AND SAFETY

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**PART 1**

**STATE FIRE MARSHAL DIVISION ADMINISTRATION**

**53-7-101. Short title.**

This chapter is known as the "Utah Fire Prevention and Safety Act."

**1993**

**53-7-102. Definitions.**

As used in this chapter:

- (1) "Director" means the state fire marshal appointed in accordance with Section 53-7-103.
- (2) "Division" means the State Fire Marshal Division created in Section 53-7-103.
- (3) "Fire officer" means:
  - (a) the state fire marshal;
  - (b) the state fire marshal's deputies or salaried assistants;
  - (c) the fire chief or fire marshal of any county, city, or town fire department;
  - (d) the fire officer of any fire district;
  - (e) the fire officer of any special service district organized for fire protection purposes;

and  
(f) authorized personnel of any of the persons specified in Subsections (a) through (e).

- (4) "State fire marshal" means the fire marshal appointed director by the commissioner under Section 53-7-103.

**1993**

**53-7-103. State Fire Marshal Division -- Creation -- State fire marshal -- Appointment, qualifications, duties, and compensation.**

- (1) There is created within the department the State Fire Marshal Division.

(2) (a) The director of the division is the state fire marshal, who shall be appointed by the commissioner upon the recommendation of the Utah Fire Prevention Board created in Section 53-7-203 and with the approval of the governor.

(b) The state fire marshal is the executive and administrative head of the division, and shall be qualified by experience and education to enforce rules made under this chapter and perform the duties prescribed by the commissioner.

(3) The state fire marshal acts under the supervision and control of the commissioner and may be removed from his position at the will of the commissioner.

- (4) The state fire marshal shall:

- (a) enforce rules made under this chapter as provided in accordance with Section 53-7-104;
- (b) complete the duties assigned by the commissioner;
- (c) examine plans and specifications for school buildings, as required by Section 53A-20-104;
- (d) approve criteria established by the state superintendent for building inspectors;
- (e) promote and support injury prevention public education programs; and
- (f) perform all other duties provided in this chapter.

(5) The state fire marshal shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

**2002**

**53-7-104. Enforcement of rules -- Division of authority and responsibility.**

(1) The authority and responsibility for enforcing rules made under this chapter is divided as provided in this section.

(2) The fire officers of any city or county shall enforce the rules of the state fire marshal in their respective areas.

(3) The state fire marshal may enforce the rules in:

(a) areas outside of corporate cities, fire protection districts, and other local districts or special service districts organized for fire protection purposes; and

(b) state-owned property, school district owned property, and privately owned property used for schools located within corporate cities and county fire protection districts, asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health-care facilities, children's homes or institutions, or similar institutional type occupancy of any capacity.

(4) The state fire marshal may enforce the rules in corporate cities, counties, fire protection districts, and special service districts organized for fire protection purposes upon receiving a request from the chief fire official or the local governing body. **2007**

**53-7-105. State fire marshal, deputies, and investigators -- Status of law enforcement officers -- Inclusion in Public Safety Retirement -- Training.**

(1) The state fire marshal, his deputies, and investigators, for the purpose of enforcing and investigating violations of fire related statutes and ordinances, have the status of law enforcement officers.

(2) Inclusion under Title 49, Chapter 14, Public Safety Contributory Retirement Act, or Title 49, Chapter 15, Public Safety Noncontributory Retirement Act, is not authorized by Subsection (1) except as provided in those chapters.

(3) The commissioner, with the concurrence of the Peace Officer Standards and Training Advisory Board may require peace officer standards and training for the state fire marshal, his deputies, and investigators. **2002**

**53-7-106. Adoption of fire code.**

(1) A fire code promulgated by a nationally recognized code authority and adopted by the Utah Fire Prevention Board pursuant to Section 53-7-204 is the state fire code, to which cities, counties, fire protection districts, and the state shall adhere in safeguarding life and property from the hazards of fire and explosion.

(2) (a) The legislative body of a political subdivision may make ordinances that are more restrictive in its fire code requirements than the state fire code, in order to meet the public safety needs of the political subdivision.

(b) The legislative body of a political subdivision shall provide to the Utah Fire Prevention Board one copy of each ordinance enacted under Subsection (2)(a).

(c) The state fire marshal shall keep an indexed copy of the ordinances.

(d) Copies of the ordinances are available from the state fire marshal on request. **2001**

**53-7-107. Electronic writing.**

(1) Any writing required or permitted by this chapter may be filed or prepared in an electronic medium and by electronic transmission subject to the ability of the recipient to accept and process the electronic writing.

(2) Any writing required by this chapter to be signed that is in an electronic medium shall be signed by electronic signature in accordance with Title 46, Chapter 4, Uniform Electronic Transactions Act. **2006**

**53-7-108. Repealed.**

**2002**

**PART 2**

**FIRE PREVENTION AND FIREWORKS**

**53-7-201. Short title.**

This part is known as the "Fire Prevention and Fireworks Act."

**1993**

**53-7-202. Definitions.**

As used in this part:

(1) "Agricultural and wildlife fireworks" means a class C dangerous explosive that:

(a) uses sound or light when deployed; and

(b) is designated to prevent crop damage or unwanted animals from entering a specified area.

(2) "Board" means the Utah Fire Prevention Board created in Section 53-7-203.

(3) "Class A explosive" means a division 1.1 or 1.2 explosive as defined by the U.S. Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

(4) "Class B explosive" means a division 1.2 or 1.3G explosive as defined by the U.S. Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

(5) "Class C explosive" means a division 1.4G explosive as defined by the U.S. Department of

Transportation in Part 173, Title 49, Code of Federal Regulations.

- (6) (a) "Class C common state approved explosive" means a class C explosive that is:
  - (i) a cardboard or heavy paper cylindrical tube or cone that:
    - (A) produces a shower of color and sparks that reach a maximum height of 15 feet;
    - (B) may whistle or pop; and
    - (C) is not designed to explode or leave the ground;
  - (ii) a pyrotechnic wheel device that:
    - (A) may be attached to a post or tree; and
    - (B) contains up to six "driver" units or tubes;
  - (iii) any device that:
    - (A) spins, jumps, or emits popping sounds when placed on the ground;
    - (B) does not exceed a height of 15 feet when discharged; and
    - (C) does not travel laterally more than ten feet on a smooth surface when discharged;
  - (iv) a morning glory, suzuki, or flitter sparkler; and
  - (v) a single tube day type parachute that does not carry any flare or flame upon descent.
- (b) "Class C common state approved explosive" does not mean:
  - (i) class C dangerous explosives; or
  - (ii) exempt explosives.
- (7) (a) "Class C dangerous explosive" means a class C explosive that is:
  - (i) a firecracker, cannon cracker, salute, cherry bomb, or other similar explosive;
  - (ii) a skyrocket or any device other than a model rocket that uses combustible or explosive material and rises more than 15 feet when discharged;
  - (iii) a roman candle or other device that discharges balls of fire over 15 feet in height;
  - (iv) a tube or cone aerial firework that propels comets, shells, salutes, flash shells, or similar devices more than 15 feet into the air; and
  - (v) a chaser, whistler, or other device that darts or travels more than ten feet laterally on a smooth surface or exceeds 15 feet in height when discharged.
- (b) A "class C dangerous explosive" does not mean:
  - (i) class C common state approved explosives; or
  - (ii) exempt explosives.
- (8) "Display fireworks" means an aerial shell, salute, flash shell, comet, sky battle, mine, and any similar class C explosive or class B explosive.
- (9) (a) "Display operator" means the person who purchases and is responsible for setting up and discharging display fireworks.
- (b) "Display operator" does not mean a fire department.
- (10) "Exempt explosive" means a model rocket, toy pistol cap, emergency signal flare, snake or glow worm, party popper, trick noisemaker, match, and wire sparkler under 12 inches in length.
- (11) (a) "Fireworks" means:
  - (i) class C explosives;
  - (ii) class C dangerous explosives; and
  - (iii) class C common state approved explosives.
- (b) "Fireworks" does not mean:
  - (i) exempt explosives;
  - (ii) class A explosives; and
  - (iii) class B explosives.
- (12) "Importer" means a person who brings class B or class C explosives into Utah for the general purpose of resale within the state or exportation to other states.
- (13) (a) "Pyrotechnic" means any composition or device manufactured or used to produce a visible or audible effect by combustion, deflagration, or detonation.
- (b) "Pyrotechnic" does not mean exempt explosives.
- (14) "Retail seller" means a person who sells class C common state approved explosives to the public during the period authorized under Section 53-7-225.
- (15) "State fire code" means a nationally recognized fire code adopted by the Utah Fire Prevention Board pursuant to Section 53-7-204.
- (16) "Trick noisemaker" includes a:
  - (a) tube or sphere containing pyrotechnic composition that produces a white or colored smoke as its primary effect when ignited; and
  - (b) device that produces a small report intended to surprise the user, including a:
    - (i) "booby trap," which is a small tube with a string protruding from both ends that ignites the friction sensitive composition in the tube when the string is pulled;
    - (ii) "snapper," which is a small paper-wrapped device containing a minute quantity of explosive composition coated on bits of sand that explodes producing a small report;
    - (iii) "trick match," which is a kitchen or book match coated with a small quantity of explosive or pyrotechnic composition that produces a small shower of sparks when ignited;
    - (iv) "cigarette load," which is a small wooden peg coated with a small quantity of explosive composition that produces a small report when the cigarette is ignited; and
    - (v) "auto burglar alarm," which is a tube that:
      - (A) contains pyrotechnic composition that produces a loud whistle and smoke when ignited;
      - (B) may contain a small quantity of explosive to produce a small explosive noise; and
      - (C) is ignited by a squib.
- (17) "Unclassified fireworks" means any of the following:

(a) a pyrotechnic device that is used, given away, or offered for sale, that has not been tested, approved, and classified by the U.S. Department of Transportation;

(b) an approved device that has been altered or redesigned since obtaining approval by the U.S. Department of Transportation; and

(c) a pyrotechnic device that is being tested by a manufacturer, importer, or wholesaler before receiving approval by the U.S. Department of Transportation.

(18) "Wholesaler" means any of the following:

(a) a person who sells class C common state approved explosives to a retailer; and

(b) a person who sells class B explosives or class C dangerous explosives for display use.

2007

**53-7-203. Utah Fire Prevention Board -- Creation -- Members -- Terms -- Selection of chair and officers -- Quorum -- Meetings -- Compensation -- Division's duty to implement board rules.**

(1) There is created within the division the Utah Fire Prevention Board.

(2) The board shall be nonpartisan and be composed of ten members appointed by the governor as follows:

(a) a city or county official;

(b) a licensed architect;

(c) a licensed engineer;

(d) a member of the Utah State Firemen's Association;

(e) the state forester;

(f) the commissioner of the Labor Commission or the commissioner's designee;

(g) a member of the Utah State Fire Chiefs Association;

(h) a member of the Utah Fire Marshal's Association;

(i) a building inspector; and

(j) a citizen appointed at large.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) A member whose term has expired may continue to serve until a replacement is appointed pursuant to Subsection (3).

(6) The board shall select from its members a chair and other officers as the board finds necessary.

(7) A majority of the members of the board is a quorum.

(8) The board shall hold regular semiannual meetings for the transaction of its business at a time and place to be fixed by the board and shall hold other meetings as necessary for proper transaction of business.

(9) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

(10) The division shall implement the rules of the board and perform all other duties delegated by the board.

2001

**53-7-204. Duties of Utah Fire Prevention Board -- Local administrative duties.**

(1) The board shall:

(a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) adopting a nationally recognized fire code and the specific edition of that fire code as the state fire code to be used as the standard;

(ii) establishing minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any:

(A) publicly owned building, including all public and private schools, colleges, and university buildings;

(B) building or structure used or intended for use as an asylum, a mental hospital, a hospital, a sanitarium, a home for the aged, an assisted living facility, a children's home or day

care center, or any similar institutional type occupancy of any capacity; and

(C) place of assemblage where 50 or more persons may gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education;

(iii) establishing safety and other requirements for placement and discharge of display fireworks based upon:

(A) the specific edition of the nationally recognized fire code selected by the board under Subsection (1)(a)(i); and

(B) relevant publications of the National Fire Protection Association;

(iv) establishing minimum safety standards for retail storage, handling, and sale of class C common state approved explosives;

(v) defining methods to establish proof of competence to place and discharge display fireworks;

(vi) for deputizing qualified persons to act as deputy fire marshals, and to secure special services in emergencies;

(vii) implementing Sections 53-7-106 and 53-7-205;

(viii) setting guidelines for use of funding;

(ix) establishing criteria for training and safety equipment grants for fire departments enrolled in firefighter certification; and

(x) establishing minimum ongoing training standards for hazardous materials emergency response agencies;

(b) recommend to the commissioner a state fire marshal;

(c) develop policies under which the state fire marshal and the state fire marshal's authorized representatives will perform;

(d) provide for the employment of field assistants and other salaried personnel as required;

(e) prescribe the duties of the state fire marshal and the state fire marshal's authorized representatives;

(f) establish a statewide fire prevention, fire education, and fire service training program in cooperation with the Board of Regents;

(g) establish a statewide fire statistics program for the purpose of gathering fire data from all political subdivisions of the state;

(h) establish a fire academy in accordance with Section 53-7-204.2;

(i) coordinate the efforts of all people engaged in fire suppression in the state;

(j) work aggressively with the local political subdivisions to reduce fire losses;

(k) regulate the sale and servicing of portable fire extinguishers and automatic fire suppression systems in the interest of safeguarding lives and property;

(l) establish a certification program for persons who inspect and test automatic fire sprinkler systems;

(m) establish a certification program for persons who inspect and test fire alarm systems; and

(n) establish a certification for persons who provide response services regarding hazardous materials emergencies.

(2) The board may incorporate in its rules by reference, in whole or in part, nationally recognized and readily available standards and codes pertaining to the protection of life and property from fire, explosion, or panic.

(3) (a) The board may only make amendments to the state fire code adopted under Subsection (1)(a)(i) in accordance with Section 53-7-205.

(b) The amendments may be applicable to the entire state or within a city, county, or fire protection district.

(4) The following functions shall be administered locally by a city, county, or fire protection district:

(a) issuing permits, including open burning permits pursuant to Sections 11-7-1 and 19-2-114;

(b) creating a local board of appeals in accordance with the state fire code; and

(c) establishing, modifying, or deleting fire flow and water supply requirements.

2008

#### **53-7-204.2. Fire Academy -- Establishment -- Fire Academy Support Account -- Funding.**

(1) In this section:

(a) "Account" means the Fire Academy Support Account created in Subsection (4).

(b) "Property insurance premium" means premium paid as consideration for property insurance as defined in Section 31A-1-301.

(2) The board shall:

(a) establish a fire academy that:

(i) provides instruction and training for paid, volunteer, institutional, and industrial firefighters;

(ii) develops new methods of firefighting and fire prevention;

(iii) provides training for fire and arson detection and investigation;

(iv) provides public education programs to promote fire safety;

(v) provides for certification of firefighters, pump operators, instructors, and officers; and

(vi) provides facilities for teaching fire-fighting skills;

(b) establish a cost recovery fee in accordance with Section 63J-1-303 for training commercially employed firefighters; and

(c) request funding for the academy.

(3) The board may:

(a) accept gifts, donations, and grants of property and services on behalf of the fire academy; and

(b) enter into contractual agreements necessary to facilitate establishment of the school.

(4) (a) To provide a funding source for the academy and for the general operation of the State Fire Marshal Division, there is created in the General Fund a restricted account known as the Fire Academy Support Account.

(b) The following revenue shall be deposited in the account to implement this section:

(i) the percentage specified in Subsection (5) of the annual tax for each year that is levied, assessed, and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon property insurance premiums and as applied to fire and allied lines insurance collected by insurance companies within the state;

(ii) the percentage specified in Subsection (6) of all money assessed and collected upon life insurance premiums within the state;

(iii) the cost recovery fees established by the board;

(iv) gifts, donations, and grants of property on behalf of the fire academy; and

(v) appropriations made by the Legislature.

(5) The percentage of the tax specified in Subsection (4)(b)(i) to be deposited in the account each fiscal year is 25%.

(6) The percentage of the money specified in Subsection (4)(b)(ii) to be deposited in the account each fiscal year is 5%. 2008

**53-7-205. State fire code amendments -- Board duties and responsibilities.**

(1) The board shall receive from a city, county, or fire protection district requests for amendments to the state fire code.

(2) The division or the board on its own initiative may make recommendations to the division for amendments to the state fire code.

(3) (a) Within 45 days after receipt of a request or recommendation concerning an amendment, the board shall direct the division to convene an informal hearing concerning the amendment.

(b) The hearing shall be conducted in accordance with the rules of the board.

(c) The board shall decide to accept, modify, or reject the amendment.

(4) Within 15 days following the completion of the hearing, the board shall direct the division to send written notification, in a form prescribed by the board, to the city, county, or fire protection district of its decision.

(5) The board shall make rules incorporating the amendments accepted or modified under Subsection (3). 2001

**53-7-206. Equipment for new fire protection systems -- Standard equipment.**

All equipment for fire protective purposes, purchased in connection with the installation of completely new fire protection systems by any authorities having charge of public property, shall be equipped with the standard hydrant stem and cap nuts and standard threads for fire hose and fire hydrant couplings and fittings designated as the national standard, as adopted by the board, which standard is designated as the standard for the equipment in the state. 1993

**53-7-207. Selling or offering for sale nonstandard equipment unlawful -- Exception.**

(1) A person may not sell or offer for sale any fire hose, fire hydrant, fire engine, or other equipment with threaded parts unless the equipment is fitted and equipped with the threads designated as national standard and adopted by the board and designated by law as the standard of the equipment in the state.

(2) Subsection (1) does not apply to:

(a) equipment sold or offered for sale to a local governing body for the purposes of maintaining, repairing, replacing, or extending existing fire protection equipment as provided in Section 11-4-2; and

(b) adapters and caps for fire protective purposes. 1993

**53-7-208. Penalty and punishment.**

(1) Any person who violates Sections 53-7-206 and 53-7-207, requiring standard equipment, is guilty of a class B misdemeanor.

(2) A violator shall be punished by:

(a) a fine of not less than \$25 nor more than \$250;

(b) imprisonment in the county jail for not less than ten days, nor more than sixty days; or

(c) both a fine and imprisonment. 1996

**53-7-209. Inspection of buildings by officials.**

(1) A fire chief or officer may enter any building or premises not used as a private dwelling at any reasonable hour to inspect the building or premises and enforce the rules made under this part, including the state fire code adopted under Section 53-7-204.

(2) The owner, lessee, manager, or operator of any building or premises not used as a private dwelling shall permit inspections under this section. 2001

**53-7-210. Fire investigations by local officers -- Notification to division.**

(1) The chief fire officer of any city, town, or county fire department, or of any fire district or special service district organized for fire protection purposes, or his authorized representative shall investigate the cause, origin, and circumstances of each fire occurring in his jurisdiction when property has been destroyed or damaged.

(2) The fire officer shall:

(a) begin the investigation immediately after the occurrence of the fire; and

(b) attempt to determine, among other things, whether the fire was the result of carelessness or of design.

(3) If the fire officer making this investigation determines that the fire appears to be suspicious, or of unknown origin, the officer may notify the division to request assistance. 2001

**53-7-211. Fire investigations by fire marshal.**

(1) If the division is of the opinion that further investigation of a fire is necessary, the state fire marshal, his deputy, or representative may:

(a) join the investigation in cooperation with the fire officers who have been conducting it;

(b) upon the request of the chief fire official of the political subdivision, assume control of the investigation and direct it; or

(c) conduct an independent investigation if necessary.

(2) A fire officer who has conducted or is conducting the investigation shall cooperate in every possible way with the state fire marshal, his deputy, and representative to further the purpose of the investigation.

(3) The county attorney or district attorney of the county in which the fire occurred shall, upon the request of the state fire marshal, his deputy, or representative, assist in the investigation.

1993

**53-7-212. Powers of fire marshal in respect to investigation.**

In investigating any fire the state fire marshal and his deputy may:

(1) subpoena witnesses;

(2) compel their attendance and testimony; and

(3) require the production of books, papers, documents, records, and other tangible items that constitute or may contain evidence relevant to the investigation in the judgment of the state fire marshal or his deputy.

1993

**53-7-213. Criminal charges resulting from investigation -- Procedure.**

If the state fire marshal, his deputy, or representative, or any other officer participating in the investigation of any fire believes that there is evidence sufficient to charge a person with arson, burning with intent to defraud or prejudice the insurer, or a similar crime, he shall furnish the county attorney or district attorney of the county in which the crime occurred with his evidence and request the county attorney or district attorney to commence the proper procedures to charge the person with the appropriate crime.

1993

**53-7-214. Insurance company reports of fires.**

(1) The state fire marshal, his deputy, and investigator may, in writing, require any insurance company transacting business in this state to release to the state fire marshal all relevant information or evidence found important by the state fire marshal, his deputy, and investigator that the company may have in its possession, relating to any fire loss in this state in which the company has an insuring interest. Relevant information includes:

(a) insurance policy information related to a fire loss under investigation and any application for the policy;

(b) available policy premium payment records;

(c) history of previous claims made by the insured; and

(d) material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence related to the investigation.

(2) (a) Every insurance company transacting business in the state must file with the division a report of any fire of suspicious origin.

(b) The report shall show:

(i) the name of the insured;

(ii) the location of the property burned;

(iii) the probable cause of the fire;

(iv) the occupancy of the property burned;

(v) the construction of the building or structure burned;

(vi) the market value of the property involved;

(vii) the actual loss;

(viii) the insurance carried;

(ix) the insurance paid;

(x) the apportionment of loss where more than one company was on the risk; and

(xi) if a motor vehicle or building is involved in any fire loss, a description of the motor vehicle or building.

(c) In case of a fire of suspicious or incendiary origin, a preliminary report shall be made immediately through some officer or representative of the insurance company, showing:

(i) the name of the insured;



- (ii) the date of the fire;
- (iii) the location;
- (iv) occupancy; and
- (v) other facts and circumstances tending to establish the cause or origin of the fire.

(3) All persons making an adjustment occasioned by a loss due to a fire of suspicious or incendiary origin in this state shall, upon written request, send to the division a copy of the final adjustment immediately after the adjustment is made, signed by the person making the adjustment.

(4) Any insurance company or person acting in its behalf or any person making adjustments occasioned by a loss due to fire who releases information, whether oral or written, pursuant to Subsection (1), (2), or (3) is immune from any liability for the release of this information arising out of a civil action or penalty resulting from a criminal prosecution. 1993

**53-7-215. Portable fire extinguishers -- Persons not subject to part.**

(1) The filling or charging of portable fire extinguishers prior to initial sale by the manufacturer is not subject to this part.

(2) Any firm that maintains its own fully equipped and specially staffed fire prevention, fire protection, and fire extinguisher servicing facilities is not subject to the licensing provisions of this part if it services only its own portable fire extinguishers.

(3) Individuals shall maintain a current certificate of registration. 1993

**53-7-216. Portable fire extinguishers -- Certification required to service.**

(1) Each firm engaged in the business of servicing portable fire extinguishers or automatic fire suppression systems that automatically detect fire and discharge an approved fire extinguishing agent onto or in the area of the fire shall be certified by the state fire marshal.

(2) An application for certification shall be in writing, on forms prescribed by the board, and require evidence of competency.

(3) The board may establish a fee under Section 63J-1-303 to be paid upon application for certification.

(4) This section does not apply to standpipe systems, deluge systems, or automatic fire sprinkler systems. 2008

**53-7-217. Portable fire extinguishers -- Permit required to perform hydrostatic testing.**

Each firm performing hydrostatic testing of portable fire extinguishers shall:

(1) perform the tests in accordance with the specifications of the United States Department of Transportation for compressed gas cylinders; and

(2) obtain a permit from the division by applying in writing on forms provided by the division. 1993

**53-7-218. Portable fire extinguishers -- Sale or lease without approval prohibited.**

A portable fire extinguisher may not be sold or leased in the state unless it is approved, labeled, or listed by a nationally recognized testing laboratory approved by the division as qualified to test portable fire extinguishers. 1993

**53-7-219. Portable fire extinguishers -- Hearings authorized.**

The state fire marshal may conduct hearings or proceedings concerning the renewal, revocation, or refusal to issue permits. 1993

**53-7-220. Short title.**

Sections 53-7-220 through 53-7-225 are known as the "Utah Fireworks Act." 1993

**53-7-221. Exceptions from Utah Fireworks Act.**

(1) Sections 53-7-220 through 53-7-225 do not apply to class A, class B, and class C explosives that are not for use in Utah, but are manufactured, stored, warehoused, or in transit for destinations outside of Utah.

(2) Sections 53-7-220 through 53-7-225 do not supersede Section 23-13-7, regarding use of fireworks and explosives by the Division of Wildlife Resources and federal game agents. 1993

**53-7-222. Restrictions on the sale or use of fireworks.**

(1) (a) The division shall test and approve a representative sample of each class C common state approved explosive before the explosive may be sold to the public.

(b) The division shall publish a list of all class C explosives that are approved for sale to the public each year.

(2) (a) Except as provided in Subsection (b), class C dangerous explosives may not be possessed, discharged, sold, or offered for retail sale.

(b) (i) The following persons may purchase, possess, or discharge class C dangerous explosives:

(A) display operators who receive a license from the division in accordance with Section 53-7-223 and approval from their local licensing authority in accordance with Section 11-3-3.5; and

(B) operators approved by the Division of Wildlife Resources or Department of Agriculture and Food to discharge agricultural and wildlife fireworks.

(ii) Importers and wholesalers licensed under Section 53-7-224 may possess, sell, and offer to sell class C dangerous explosives.

(3) Unclassified fireworks may not be sold, or offered for sale.

1997

**53-7-223. State license for display or special effects operators -- Permit -- Fee -- Division duties -- Revocation.**

(1) A person may not purchase, possess, or discharge display or special effects fireworks unless the person has obtained a display or special effects operator license from the division.

(2) The division shall:

(a) issue an annual license to any display or special effects operator who:

(i) applies for the permit;

(ii) pays a \$40 fee;

(iii) demonstrates proof of competence; and

(iv) certifies that he will comply with the rules governing placement and discharge of fireworks established by the board;

(b) provide the licensee with a copy of the rules governing placement and discharge of fireworks made under Section 53-7-204; and

(c) together with county and municipal officers enforce Sections 53-7-220 through 53-7-225.

(3) The division may:

(a) revoke a license issued under this section for cause;

(b) seize display and special effects fireworks, fireworks, and unclassified fireworks that are offered for sale, sold, or in the possession of an individual in violation of Sections 53-7-220 through 53-7-225; and

(c) create application and certification forms.

2007

**53-7-224. Licensing importers and wholesalers -- Fee.**

The division shall:

(1) annually license each importer and wholesaler of pyrotechnic devices; and

(2) charge an annual license fee of \$250.

1993

**53-7-225. Times for sale and discharge of fireworks.**

Class C common state approved explosives may be:

(1) sold:

(a) after June 19 and before July 26;

(b) after December 19 and before January 3; and

(c) 15 days before and on the Chinese New Year;

(2) discharged three days before, on the day of, and three days following:

(a) July 4;

(b) July 24;

(c) January 1; and

(d) the Chinese New Year.

1993

**53-7-225.5. Inspection and testing of automatic fire sprinkler systems -- Certification required.**

(1) Each person engaged in the inspection and testing of automatic fire sprinkler systems shall be certified by the state fire marshal.

(2) The board shall by rule prescribe an application form and standards for certification qualification and for renewal and revocation.

(3) Applicants for certification as an automatic fire sprinkler system inspector and tester shall:

(a) submit a written application on the form prescribed by the board;

(b) provide evidence of competency as required by the board; and

(c) submit the fee established under Subsection (4).

(4) The board may establish an application fee under Section 63J-1-303.

2008

**53-7-225.6. Inspection and testing of fire alarm systems -- Certification and exceptions.**

(1) (a) Each person, other than fire and building inspectors and electricians licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, engaged in the inspection and testing of fire alarm systems shall be certified by the state fire marshal.

(b) The board shall by administrative rule prescribe:

(i) an application form; and

(ii) standards for certification qualification and for renewal and revocation.

(2) Applicants for certification as a fire alarm system inspector and tester shall:

(a) submit a written application on the form prescribed by the board;

(b) provide evidence of competency as required by the board; and

(c) submit the fee established under Subsection (3).

(3) The board may establish an application fee under Section 63J-1-303.

2008

**53-7-226. Violations -- Misdemeanor.**

A person is guilty of a class B misdemeanor if he:

(1) violates this part;

(2) violates any order made under this part;

(3) produces, reproduces, or uses the official seal of registration of the division in any manner or for any purpose inconsistent with the designated purpose of the seal;

(4) removes, uses, or damages service tags or other labels or markings in a manner inconsistent with the designated use of the service tag;

(5) engages in the sale, storage, or handling of class C fireworks without a permit where a local government requires a permit;

(6) sells at retail, transports, possesses, or discharges class C dangerous explosives as defined in Section 53-7-202;

(7) performs or intends to perform services or induces the public to enter into any obligation relating to the performance of those services that are untrue, misleading, or reasonably known to be untrue or misleading; or

(8) builds in violation of the division's plan review or written instructions conducted on building specifications, building plans, or amendments of those specifications or plans as required under this part.

2007

### PART 3

#### LIQUEFIED PETROLEUM GAS

##### 53-7-301. Short title.

This part is known as the "Liquefied Petroleum Gas Act."

1993

##### 53-7-302. Definitions.

As used in this part:

(1) "Board" means the Liquefied Petroleum Gas Board created in Section 53-7-304.

(2) "Container" means any vessel, including cylinders, tanks, portable tanks, and cargo tanks used for transporting or storing liquefied petroleum gases, except containers subject to regulation and inspection by the Department of Transportation and under federal laws or regulations.

(3) "Distributor" means any person engaged in the distribution of liquefied petroleum gas, either wholesale or retail, including a commercial carrier, as identified by the Department of Transportation or the Interstate Commerce Commission, who transports or hauls liquefied petroleum gas that is to be distributed or sold within this state.

(4) "Enforcing authority" means the division, the municipal or county fire department, another fire-prevention agency acting within its jurisdiction, or the building official of any city or county and his authorized representatives.

(5) "Gas appliance" means any device that uses liquefied petroleum gas to produce light, heat, power, steam, hot water, refrigeration, or air conditioning.

(6) "Installer" means any person who has satisfactorily passed an examination under the supervision of the board, testing his knowledge and ability to install or properly repair domestic systems, industrial systems, liquefied petroleum gas carburetion systems, bulk plant systems, standby plant systems, or other similar systems, and who holds an installer's certificate under this part.

(7) "Licensee" means a person licensed by the board to engage in the liquefied petroleum gas business.

(8) "Liquefied petroleum gas" means any material having a vapor pressure not exceeding that allowed for commercial propane and composed predominantly of the following hydrocarbons, either by themselves or as mixtures: propane, propylene, butane, normal butane, or isobutane, and butylene, including isomers.

(9) "Liquefied petroleum gas carburetion system" means any carburetion system using liquefied petroleum gas as a fuel in a motor vehicle.

(10) "Liquefied petroleum gas fueling system" means an assembly consisting of compressors, containers, piping, and other delivery devices for the purpose of dispensing liquefied petroleum gas for use as a fuel in a motor vehicle.

(11) "LPG" means liquefied petroleum gas.

(12) "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, or any other group or combination acting as a unit, and includes:

(a) a husband, wife, or both where joint benefits are derived from the operation of a business or activity subject to this part; and

(b) any state, county, municipality, or other agency engaged in a business or activity subject to this part.

(13) "Red tag" means a card or device, red in color, containing printed notice of the condemnation of a liquefied petroleum gas system as a result of a violation of this part, or any rules or orders made by the board; the tag, when attached to the system, is official notice of condemnation and of the prohibition of further use, so long as the red tag remains lawfully affixed.

(14) "System" means an assembly consisting of one or more containers with a means for conveying LPG from the container or containers to dispensing or consuming devices, either continuously or intermittently, and that incorporates components intended to achieve control of quantity, flow, and pressure or state, either liquid or vapor.

1994

**53-7-303. Exclusions from part.**

This part does not apply to any of the following:

- (1) the production, refining, or manufacture of LPG;
- (2) the storage, sale, or transportation of LPG by pipeline or railroad tank car by a pipeline company, producer, refiner, or manufacturer;
- (3) equipment used by a pipeline company, producer, refiner, or manufacturer in a producing, refining, or manufacturing process or in the storage, sale, or transportation by pipeline or railroad tank car;
- (4) any deliveries of LPG to another person at the place of production, refining, or manufacturing;
- (5) underground storage facilities other than LPG containers designed for underground use;
- (6) refineries, pipeline terminals, or natural gas processing plants.

1993

**53-7-304. Liquefied Petroleum Gas Board -- Creation -- Composition -- Appointment -- Terms of officers -- Meetings -- Compensation.**

- (1) (a) There is created within the division the Liquefied Petroleum Gas Board.
- (b) The board is composed of seven members:
  - (i) two Utah fire chiefs or marshals;
  - (ii) two members of the general public; and
  - (iii) three members who are representatives of the LPG industry.
- (2) The fire chiefs or marshals and the members of the general public shall be appointed by the governor, on a nonpartisan basis.
- (3) Members of the board who are representatives of the LPG industry shall have been legal residents of the state for at least one year immediately preceding the date of appointment and have been actively engaged in the LPG industry for a period of at least five years.
- (4) The LPG industry representatives shall be appointed by the governor from a list of at least five but no more than the 12 nominees receiving the largest number of votes according to written ballots executed by representatives of the licensees under Subsection (7).
- (5) (a) Except as required by Subsection (5)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.
- (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
- (c) Members serve from the date of appointment until a replacement is appointed.
- (6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (7) (a) The balloting of licensees shall be conducted by the division.
- (b) For the appointments, the division shall forward to each licensee by registered or certified United States mail an official ballot for each staffed plant or facility held under Section 53-7-309, with instructions for executing the ballot and returning it to the division.
- (8) (a) The board shall elect its own chair and vice chair at its first regular meeting each calendar year.
- (b) All meetings of the board shall be held on a prescribed date, at least quarterly, and at any time a majority of the board members sends a request to the board chair.
- (c) A majority of the members of the board is a quorum for the transaction of business.
- (9) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (ii) Members may decline to receive per diem and expenses for their service.
- (b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (ii) State government officer and employee members may decline to receive per diem and expenses for their service.

2001

**53-7-305. Board rulemaking -- Notice.**

- (1) (a) The board shall make rules as reasonably necessary for the protection of the health, welfare, and safety of the public and persons using LPG.
- (b) The rules shall be in substantial conformity with the generally accepted standards of safety concerning LPG, and shall include the following conditions:
  - (i) the rules relating to safety in the storage, distribution, dispensing, transporting, and use of LPG in this state and in the manufacture, fabrication, assembly, sale, installation, and use of LPG systems, containers, apparatus, or appliances shall be reasonable; and
  - (ii) the rules shall conform as nearly as possible to the standards of the National Fire Protection Association, relating to the design, construction, installation, and use of systems, containers, apparatus, appliances, and pertinent equipment for the storage, transportation, dispensation, and use of LPG.
- (2) The board may make rules:
  - (a) setting minimum general standards covering the design, construction, location,

installation, and operation of equipment for storing, handling, transporting by tank truck or tank trailer, or using LPG;

(b) specifying the odorization of the gases and the degree of odorization;

(c) governing LPG distributors and installers and the installation of LPG systems, carburetion systems, and fueling systems; and

(d) prescribing maximum container removal rates.

(3) (a) When a proposed rule is filed, the board shall give at least ten days' notice to all license applicants and licensees under this chapter by sending a notice of the proposed new, revised, or amended rule together with a notice of hearing to the licensee's current address on file with the board.

(b) Any person affected by rulemaking under this part may submit comment, in a format prescribed by the board, on the rule.

(c) A certificate citing the adoption and the effective date of a rule shall be signed by the members comprising a majority of the board.

(d) Within ten days after the adoption of the rule, the board shall send to each license applicant or licensee, at his current address on file, a notice of the adoption of the rule, including its effective date.

(e) A facsimile of any member's signature may be used under this section if authorized by the member.

2001

#### **53-7-306. Duties and powers of the board -- Fee setting.**

(1) The board shall monitor rates charged in the industry for container removal.

(2) The board may:

(a) set civil penalties for violation of any rule or order made under this part;

(b) in conducting hearings on the issuance or revocation of any license:

(i) compel the attendance of witnesses by subpoena;

(ii) require the production of any records or documents determined by it to be pertinent to the subject matter of the hearing; and

(iii) apply to the district court of the county where the hearing is held for an order citing any applicant or witness for contempt, and for failure to attend, testify, or produce required documents;

(c) suspend or revoke licenses and refuse renewals of licenses if the applicant or licensee has been guilty of conduct harmful to either the safety or protection of the public;

(d) adopt bylaws for its procedures and methods of operation; and

(e) at the request of the enforcing authority, grant exceptions from its rules to accommodate local needs as it determines to be in the best interest of public safety or the persons using LPG materials or services.

(3) The board shall, in accordance with Section 53-7-314, establish fees to cover the cost of administering this section.

1993

#### **53-7-307. Duties of the division.**

The division shall:

(1) prescribe the method and form to apply for a LPG license, with the approval of the board;

(2) investigate the experience, reputation, and background of applicants;

(3) recommend to the board issuing, suspending, revoking, and denying licenses;

(4) assist the board in conducting hearings in connection with the applications for, or revocation of, licenses;

(5) submit to the governor a biennial report before September 1 of each even-numbered year, covering the board's transactions during the biennium ending June 30 of that year, including a complete statement of the receipts and expenditures of the board during that period;

(6) keep accurate records and minutes of all meetings, which shall be open to public inspection at all reasonable times, and keep a public record of all applications for licenses and licenses issued by the board;

(7) conduct examinations of every license applicant to determine the responsibility, ability, knowledge, experience, or other qualifications of the applicant for a license;

(8) require competency testing for all employees and subcontractors of licensees engaged in transporting or dispensing LPG or installing, servicing, or repairing an LPG fueling or carburetion system under this part;

(9) prepare applications, collect fees, and issue licenses for any facility that handles LPG;

(10) provide for or direct the inspection of the site of any facility that stores, dispenses, services, or handles LPG;

(11) provide inspections to any facility where a qualified authority does not exist; and

(12) prepare and administer examinations, collect fees, and issue LPG certificates to personnel who handle or work with LPG.

1993

#### **53-7-308. Licenses and certificates.**

A person may not engage in any of the following activities related to LPG unless he has obtained an authorizing license or certification from the board:

(1) container activities: the manufacture, assembly, repair, sale, installation, or subframing of containers for use in this state, except that a license is not required for the sale of new containers of 96 pounds water capacity or less;

(2) systems activities: the installation, service, or repair of LPG systems for use in this state, including the laying or connecting of pipes and fittings connecting with or to systems or servicing a system and appliances to be used with LPG as a fuel;

(3) appliance activities: the service, installation, or repair of appliances used or to be used in this state in connection with systems using LPG as a fuel; or

(4) product activities: the sale, transportation, dispensation, or storage of LPG in this state, except that a license is not required to sell LPG where the vendor never obtains possessory rights to the product sold or where the product is transported or stored by the ultimate consumer for personal consumption only.

1993

#### **53-7-309. Classification of applicants and licensees.**

(1) To administer this part, the board shall classify all applicants and licensees as follows:

(a) Class 1: a licensed dealer who:

(i) is engaged in the business of installing gas appliances or systems for the use of LPG;

(ii) sells, fills, refills, delivers, or is permitted to deliver any LPG; or

(iii) is involved under both Subsection (i) and (ii).

(b) Class 2: a business engaged in the sale, transportation, and exchange of cylinders, or engaged in more than one of these, but not transporting or transferring gas in liquid.

(c) Class 3: a business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances or LPG systems.

(d) Class 4: those businesses not specifically within classification 1, 2, or 3 may at the discretion of the board be issued special licenses.

(2) (a) Any license granted under this section entitles the licensee to operate a staffed plant or facility consistent with the license at one location, which is stated in the license, under Section 53-7-310.

(b) For each additional staffed plant or facility owned or operated by the licensee, the licensee shall register the additional location with the board and pay an additional annual fee, to be set in accordance with Section 53-7-314.

1993

#### **53-7-310. License specifications and limits.**

(1) (a) A license issued under this part shall state the name of the person or persons to whom it is issued.

(b) The license shall specify the location, by street and number, of the premises for which it is issued and the particular classification of the license authorizing the type of staffed plant or facility to be conducted.

(c) The registration of additional staffed plants or facilities, under Subsection 53-7-309 (2), shall specify the location, by street and number, of the premises for which it is issued and the particular classification of the license authorizing the type of business to be conducted.

(2) (a) Any license issued under this part is not transferable by the licensee or licensees to any other person, firm, association, partnership, or corporation, and is valid only for the particular premises and particular persons described on the license.

(b) If there is any transfer or change in the ownership, the change shall be reported to the board within 30 days.

(c) A license or registration fee paid under this part may not be refunded when any license issued is no longer valid because of:

(i) a voluntary transfer of any nature;

(ii) revocation under this part;

(iii) death of the holder;

(iv) insolvency;

(v) assignment for the benefit of creditors; or

(vi) for any other reason determined by rule of the board.

1993

#### **53-7-311. Certification of licensees for certain activities.**

(1) A person that transports or dispenses LPG or that installs, repairs, or services appliances, containers, equipment, systems, or piping for the use of LPG shall be certified by the division by passing an appropriate examination based on the safety requirements of the board.

(2) (a) A trainee employee is exempt from this examination for 45 working days, and until examined by a representative of the board. A trainee employee, during the 45-day period, shall be supervised by a qualified instructor.

(b) Any LPG licensee hiring a trainee shall, within 20 days of the commencement of employment, notify the board, so that an examination may be scheduled. If the trainee fails to pass the examination, the trainee may retake it after additional instruction. Prior to retaking the exam, the trainee shall again be supervised by a qualified instructor.

(3) (a) The board shall establish a reasonable fee in accordance with Section 53-7-314 to cover the costs of administering the examination.

(b) All examinations shall be administered by the division.

1993

#### **53-7-312. Division approval of certain storage system plans -- Procedure.**

(1) (a) The complete plans and specifications for all systems involving the storage of more than 5,000 water gallons of LPG shall be submitted to the division by a person licensed under this part, and receive approval by the division before installation is started. The plans shall be drawn

to scale and contain sufficient detail and clarity as necessary to indicate the nature and character of the proposed system and its compliance with this part.

(b) Two copies of the plans shall be submitted to the division and one copy shall be returned to the applicant with approval or disapproval indicated on it.

(2) (a) For dispensing systems for 5,000 water gallons or less of LPG, a detailed sketch or plan shall be submitted to the division by a person licensed under this part, and receive approval by the division before installation is started.

(b) Two copies of the plans shall be submitted to the division and one copy shall be returned to the applicant with approval or disapproval indicated on it. 1995

**53-7-313. Removal of LPG containers -- Reasonableness of rates.**

(1) Rates charged for removal of leased LPG containers shall be reasonable.

(2) The lessor of an LPG container shall credit the lessee's account the current retail price for the amount of LPG remaining in the leased container at the time the container is removed. 1993

**53-7-314. Fees -- Setting -- Deposit -- Use.**

(1) The board shall establish fees authorized in this part in accordance with the procedures specified in Section 63J-1-303, but the fees shall be deposited as provided in Subsection (2).

(2) Fees collected by the division under this part, shall be deposited with the state treasurer as a nonlapsing dedicated credit, to be used for the implementation of this part. 2008

**53-7-315. Enforcement of part and rules.**

(1) Except as provided in Subsection (6), this part, the rules made under it, and orders issued by the board are enforced by:

(a) the enforcing authority, unless otherwise provided by the board; and

(b) the board.

(2) (a) A person who knowingly violates or fails to comply with this part is guilty of a class B misdemeanor and is punishable by a fine of not less than \$50 nor more than \$500.

(b) A person previously convicted under Subsection (a) who knowingly violates or fails to comply with this part is guilty of a class B misdemeanor and is punishable by a fine of not less than \$200 nor more than \$2,000.

(c) Each day the violation or failure to comply continues constitutes a separate offense.

(3) The enforcing authority may enter the premises of a licensee under this part, or any building or other premises open to the public, at any reasonable time, for the purpose of determining and verifying compliance with this part and the rules and orders of the board.

(4) An enforcing authority may declare any container, appliance, equipment, transport, or system that does not conform to the safety requirements of this part or the rules or orders of the board, or that is otherwise defective, as unsafe or dangerous for LPG service, and shall attach a red tag in a conspicuous location.

(5) (a) A person who knowingly sells, furnishes, delivers, or supplies LPG for storage in, or use or consumption by, or through, a container, appliance, transport, or system to which a red tag is attached is guilty of a class B misdemeanor punishable by a fine of not less than \$100 and not more than \$2,000.

(b) Liquefied petroleum gas shall be removed from a container to which a red tag is attached only as provided by rules made by the board.

(c) An unauthorized person who knowingly removes, destroys, or in any way obliterates a red tag attached to a container, appliance, transport, or system is guilty of a class B misdemeanor punishable by a fine of not less than \$50 and not more than \$2,000.

(d) The enforcing authority may establish and collect a fee for any services or inspections required by this part, the rules made under it, and orders issued by the board. The fee shall be reasonable and may not exceed the amount of the cost of service or inspection provided. Fees collected under this subsection may be retained by the enforcing authority, and shall be applied to the expenses of providing these services.

(6) (a) Except as provided in Subsection (c), a person who fills a leased container in violation of the terms of a written lease is liable in an action by the container lessor for the greater of:

(i) the actual damages to the container lessor, including incidental and consequential damages and attorneys' fees; or

(ii) \$500 for each violation.

(b) (i) The burden of ascertaining the terms of a written lease for purposes of Subsection (a) is on the person filling the container.

(ii) A person has ascertained the terms of a written lease if he has:

(A) read the lease;

(B) received the assurance of the container owner that the lease does not prohibit the person from filling the container;

(C) obtained a signed, written statement from the lessee that the written lease does not prohibit the person from filling the container; or

(D) the leased container is clearly labelled as a container subject to lease terms prohibiting the filling of the container without the lessor's permission.

(c) If a lessee or lessor misrepresents his ownership or the terms of his written lease under Subsection (b), the lessee or lessor who made the misrepresentation, and not the person filling the

tank, is liable for the damages under Subsection (a).

(7) If a written container lease entered into after May 1, 1992, restricts the right to fill a leased container, the restriction shall be plainly stated in the lease in any manner designed to draw the attention of the lessee to the lease provision, including:

(a) typing the restriction in at least two point larger type than the majority of the document type;

(b) underlining the restriction; or

(c) typing the restriction in boldface type.

(8) A lessor whose container lease does not comply with Subsection (7) is disqualified from protection under Subsection (6). 1993

#### **53-7-316. Effect of part on state and local provision.**

(1) This part supersedes all other conflicting state laws or rules concerning LPG as regulated under this part.

(2) A municipality or other political subdivision may not adopt or enforce any ordinance or rule in conflict with this part, or with the rules made under this part. 1993

### **PART 4**

#### **REDUCED CIGARETTE IGNITION PROPENSITY AND FIREFIGHTER PROTECTION**

#### **53-7-401. Title.**

This part is known as the "The Reduced Cigarette Ignition Propensity and Firefighter Protection Act." 2007

#### **53-7-402. Definitions.**

As used in this part:

(1) "Agent" means any person authorized by the State Tax Commission to purchase and affix stamps on packages of cigarettes.

(2) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(3) "Manufacturer" means:

(a) any entity which:

(i) manufactures or otherwise produces cigarettes to be sold in the state;

(ii) causes cigarettes to be manufactured or produced anywhere with the intent to sell in the state; or

(iii) manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced with the intent to sell in the United States through an importer;

(b) the first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(c) any entity that becomes a successor of an entity described in Subsection (3)(a) or (3)(b).

(4) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic, and nonsystematic methodological errors, and equipment related problems do not affect the results of the testing. Such a program ensures that the testing repeatability remains within the required repeatability values stated in Subsection 53-7-403(2)(f) for all test trials used to certify cigarettes in accordance with this part.

(5) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95% of the time.

(6) "Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

(7) "Sale":

(a) means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefore; and

(b) includes, in addition to cash and credit sales, the giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money.

(8) "Sell" means to sell, or to offer or agree to sell.

(9) "Wholesale dealer" means:

(a) any person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale; and

(b) any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person. 2007

#### **53-7-403. Test method and performance standard.**

(1) Except as provided in Subsection (8), no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless:

(a) the cigarettes have been tested in accordance with the test method required by this section;

(b) the cigarettes meet the performance standard specified in this section;



(c) a written certification has been filed by the manufacturer with the state fire marshal in accordance with Section 53-7-404; and

(d) the cigarettes have been marked in accordance with Section 53-7-405.

(2) (a) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials ("ASTM") standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."

(b) Testing shall be conducted on ten layers of filter paper.

(c) No more than 25% of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(d) The performance standard required by this section shall only be applied to a complete test trial.

(e) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization ("ISO"), or other comparable accreditation standard required by the state fire marshal.

(f) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.

(g) This section does not require additional testing if cigarettes are tested consistent with this part for any other purpose.

(h) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this section.

(3) Each cigarette listed in a certification submitted pursuant to Section 53-7-404 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column, or 10 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(4) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in Subsection (2)(a) shall propose a test method and performance standard for the cigarette to the state fire marshal. Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in Subsection (2)(c), the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to Section 53-7-404. If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this part, and the state fire marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the state fire marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the state fire marshal demonstrates a reasonable basis why the alternative test should not be accepted under this part. All other applicable requirements of this section shall apply to the manufacturer.

(5) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years, and shall make copies of these reports available to the state fire marshal and the attorney general upon written request. Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request shall be subject to a civil penalty not to exceed \$10,000 for each day after the sixtieth day that the manufacturer does not make the copies available.

(6) The state fire marshal may adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in Subsection (2)(c).

(7) The state fire marshal shall review the effectiveness of this section and report every three years to the Legislature the state fire marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations shall be submitted no later than November 1, 2011 and every November 1 of each three-year period thereafter.

(8) The requirements of Subsection (1) shall not prohibit wholesale or retail dealers from selling their existing inventory of cigarettes on or after July 1, 2008 if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to July 1, 2008, and if the wholesale or retail dealer can establish that the inventory was purchased prior to July 1, 2008 in comparable quantity to the inventory purchased during the same period of the prior year.

(9) This part shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.

2007

**53-7-404. Certification and product change -- Restricted account created.**

(1) Each manufacturer shall submit to the state fire marshal a written certification attesting that:

(a) each cigarette listed in the certification has been tested in accordance with Section 53-7-403; and

(b) each cigarette listed in the certification meets the performance standard set forth in Subsection 53-7-403(2)(c).

(2) Each cigarette listed in the certification shall be described with the following information:

(a) brand, or trade name on the package;

(b) style, such as light or ultra light;

(c) length in millimeters;

(d) circumference in millimeters;

(e) flavor, such as menthol or chocolate, if applicable;

(f) filter or nonfilter;

(g) package description, such as soft pack or box;

(h) marking approved in accordance with Section 53-7-405;

(i) the name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test; and

(j) the date that the testing occurred.

(3) The certifications shall be made available to the attorney general for purposes consistent with this part and the State Tax Commission for the purposes of ensuring compliance with this section.

(4) Each cigarette certified under this section shall be recertified every three years.

(5) For each cigarette listed in a certification, a manufacturer shall pay to the state fire marshal a \$250 fee. The state fire marshal is authorized to annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement, and oversight activities required by this part.

(6) (a) Beginning July 1, 2008, there is created a restricted account within the General Fund called the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Account."

(b) The account created in Subsection (6)(a) shall consist of all certification fees submitted by manufacturers.

(c) (i) The state treasurer shall invest monies in the account according to Title 51, Chapter 7, State Money Management Act.

(ii) The Division of Finance shall deposit interest or other earnings derived from investment of account monies into the General Fund.

(d) Upon appropriations from the Legislature, monies from the account created in Subsection (6)(a) shall be used by the state fire marshal solely to support processing, testing, enforcement, and oversight activities under this part.

(7) (a) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to the certified cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this part, that cigarette shall not be sold or offered for sale in this state until the manufacturer:

(i) retests the cigarette in accordance with the testing standards set forth in Section 53-7-403; and

(ii) maintains records of that retesting as required by Section 53-7-403.

(b) Any altered cigarette which does not meet the performance standard set forth in Section 53-7-403 may not be sold in this state.

2008

**53-7-405. Marking of cigarette packaging.**

(1) Cigarettes that are certified by a manufacturer in accordance with Section 53-7-404 shall be marked to indicate compliance with the requirements of Section 53-7-403. The marking shall be in eight-point type or larger and consist of:

(a) modification of the product UPC code to include a visible mark printed at or around the area of the UPC code, which may include alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the UPC;

(b) any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

(c) printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this part.

(2) A manufacturer shall use only one marking, and shall apply this marking uniformly for all packages marketed by the manufacturer, including:

(a) packs;

(b) cartons;

(c) cases; and

(d) any brands marketed by that manufacturer.

(3) The manufacturer shall notify the state fire marshal of the marking that it has selected in accordance with Subsection (2).

(4) Prior to the certification of any cigarette, a manufacturer shall present its proposed

marking to the state fire marshal for approval. Upon receipt of the request, the state fire marshal shall approve or disapprove the marking offered, except that the state fire marshal shall approve any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes. Proposed markings shall be considered approved if the state fire marshal fails to act within ten business days of receiving a request for approval.

(5) No manufacturer shall modify its approved marking unless the modification has been approved by the state fire marshal in accordance with this section.

(6) (a) Manufacturers certifying cigarettes in accordance with Section 53-7-404 shall provide:

(i) a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes; and

(ii) sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this section for each retail dealer to which the wholesale dealers or agents sell cigarettes.

(b) Wholesale dealers and agents shall provide a copy of the package markings received from manufacturers under Subsection (6)(a) to all retail dealers to which they sell cigarettes.

(c) Wholesale dealers, agents, and retail dealers shall permit the state fire marshal, the State Tax Commission, the attorney general, and their employees to inspect markings of cigarette packaging marked in accordance with this section.

2007

#### **53-7-406. Penalties.**

(1) (a) Except as provided in Subsection (1)(b), a manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of Section 53-7-403:

(i) for a first offense shall be liable for a civil penalty not to exceed \$10,000 per each sale of cigarettes; and

(ii) for a subsequent offense shall be liable for a civil penalty not to exceed \$25,000 per each sale of such cigarettes.

(b) A penalty imposed under Subsection (1)(a) may not exceed \$100,000 during any 30-day period against any one entity described in Subsection (1).

(2) (a) Except as provided in Subsection (2)(b), a retail dealer who knowingly sells cigarettes in violation of Section 53-7-403 shall:

(i) for a first offense for each sale or offer for sale of cigarettes, if the total number of cigarettes sold or offered for sale:

(A) does not exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$500 for each sale or offer of sale; and

(B) does exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$1,000 for each sale or offer of sale; and

(ii) for a subsequent offense, if the total number of cigarettes sold or offered for sale:

(A) does not exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$2,000 for each sale or offer of sale; and

(B) does exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$5,000 for each sale or offer of sale.

(b) A penalty imposed under Subsection (2)(a) against any retail dealer shall not exceed \$25,000 during a 30-day period.

(3) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 53-7-404 shall, for each false certification:

(a) for a first offense, be liable for a civil penalty of at least \$75,000; and

(b) for a subsequent offense, be liable for a civil penalty not to exceed \$250,000.

(4) Any person violating any other provision in this part shall be liable for a civil penalty for each violation:

(a) for a first offense, not to exceed \$1,000; and

(b) for a subsequent offense, not to exceed \$5,000.

(5) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by Section 53-7-403 shall be subject to forfeiture under Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act, and, upon being forfeited, shall be destroyed, provided, however, that prior to the destruction of any cigarette seized pursuant to this part, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(6) In addition to any other remedy provided by law, the state fire marshal or attorney general may file an action in district court for a violation of this part, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this part, including enforcement costs relating to the specific violation and attorney fees. Each violation of this part or of rules or regulations adopted under this part constitutes a separate civil violation for which the state fire marshal or attorney general may obtain relief.

2007

#### **53-7-407. Implementation -- Effect of part on Model Tobacco Settlement Act and Tobacco Tax and Licensing Act.**

(1) The state fire marshal may promulgate rules and regulations, pursuant to Title 63G,

Chapter 3, Utah Administrative Rulemaking Act, necessary to effectuate the purposes of this part.

(2) The State Tax Commission in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act, may inspect cigarettes to determine if the cigarettes are marked as required by Section 53-7-405. If the cigarettes are not marked as required, the State Tax Commission shall notify the state fire marshal.

(3) Nothing in this part shall affect an entity's obligations pursuant to:

(a) Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act; or

(b) Title 59, Chapter 22, Model Tobacco Settlement Act.

2008

**53-7-408. Inspection.**

To enforce the provisions of this part, the attorney general and the state fire marshal are hereby authorized to examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale, is hereby directed and required to give the attorney general and the state fire marshal the means, facilities, and opportunity for the examinations authorized by this section.

2007

**53-7-409. Sale outside of Utah.**

Nothing in this part shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of Section 53-7-403 if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this state.

2007

**53-7-410. Preemption.**

This part shall be repealed if a federal reduced cigarette ignition propensity standard that preempts this part is adopted and becomes effective.

2007

**53-7-411. Local regulation.**

Notwithstanding any other provision of law, a political subdivision of this state may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of this part or with any policy of this state expressed by this part, whether that policy be expressed by inclusion of a provision in this part or by exclusion of that subject from this part.

2007